

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local)	
Exchange Carriers)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Tellabs, Inc. (“Tellabs”), pursuant to Section 1.429(f) of the Commission’s Rules, opposes the petition of McLeodUSA Telecommunications Services, Inc. (“McLeod”) seeking reconsideration of the Commission’s decision to reduce the unbundling obligation for Fiber-to-the-Curb deployed by an incumbent local exchange carrier (“ILEC”).¹ Tellabs experts design, develop, deploy and support solutions for telecom service providers in more than 100 countries. Tellabs manufactures a broad portfolio of wireline and wireless telecommunications equipment. Tellabs’ product portfolio provides solutions in next-generation optical networking, managed access, carrier-class data, voice quality enhancement and cable telephony. Tellabs is a

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, FCC 04-248, 19 FCC Rcd 2093 (released October 18, 2004)(hereafter cited as “*FTTC Order*”). Notice of McLeod’s petition appeared in the *Federal Register*, June 15, 2005 at pp. 34765-76.

provider of fiber-based access systems, including Fiber-to-the-Home (FTTH) and Fiber-to-the-Curb (FTTC), to ILECs and other service providers in North America. Tellabs thus has a strong interest in this proceeding because of the potential impact unbundling has on telecommunications investment.²

Tellabs supports the Commission's efforts to eliminate regulatory barriers to the deployment of broadband services, and opposes McLeod's petition for reconsideration of the *FTTC Order*. Tellabs has witnessed the fruits of the Commission's policy to reduce the unbundling obligations imposed on ILECs when they deploy advanced, fiber-based technologies. As a result of those changes, the ILECs have greatly accelerated their deployment of broadband services, and Tellabs (as well as the rest of the manufacturers) has benefited from this rapid growth in the broadband sector.³ Equally

² Tellabs recently acquired Advanced Fibre Communications, Inc. ("AFC"), and AFC (and the North American Access business unit acquired from Marconi Corporation plc) have actively participated in the Commission's Triennial Review proceedings. *See, e.g., Ex Parte* Notices submitted by Marconi on September 26, 2003, October 1, 2003, December 3, 2003 and February 19, 2004; Comments on the TRO Remand in WC Docket No. 04-313 filed by AFC on October 4, 2004; Reply Comments on Petitions for Reconsideration in CC Docket No. 01-338 filed by Marconi on November 17, 2003; Letter to Chairman Powell from John A. Schofield, Chairman of the Board, President, & Chief Executive Officer of AFC, dated May 6, 2004.

³ *E.g.*, BellSouth Press Release, June 1, 2005, "BellSouth Selects Tellabs and JDS Uniphase for Next-Generation Broadband Network Deployments," <http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=49908> ("Tellabs will develop an upgrade for BellSouth's existing Fiber to the Curb (FTTC) platforms designed to achieve speeds greater than 50Mbps for BellSouth's

important, the public interest has been enhanced greatly by these Commission policies. Indeed, the acceleration in broadband growth is reflected in the fact that broadband access now represents the majority form of Internet connectivity in the United States, having overtaken dial up access.⁴

In deciding on reconsideration to provide equivalent unbundling obligations for FTTC as was provided for FTTH and fiber-to-the-multi-dwelling unit (“fiber-to-the-MDU”), the Commission correctly considered the supplemented record in finding that in all significant respects, FTTC was equivalent to FTTH and fiber-to-the-MDU. The record reflected that these different deep fiber architectures provide similar capabilities for “triple play” services – voice, video and high-speed data.⁵ As a result, the same revenue opportunities and public interest benefits exist for FTTC as the other fiber

customers served by this architecture. BellSouth currently has approximately 1.1 million customers served by FTTC systems and anticipates adding 150,000 - 200,000 new homes on those systems in both 2005 and 2006.”); Dow Jones, “BellSouth to Boost Fiber Deployment by 60% in 2005” (June 30, 2005).

⁴ *E.g.*, Nielsen/NetRatings Press Release, “U.S. Broadband Connections Reach Critical Mass, Crossing 50 Percent Mark for Web Surfers,” August 18, 2004, http://www.netratings.com/pr/pr_040818.pdf.

⁵ Tellabs is developing enhancements to its FTTC technology that will support speeds of greater than 50 Mbps to each household, which will allow BellSouth to provide video and high-speed Internet access services in competition with cable service. *See* note 3, *supra*.

technologies. In addition, the record indicated that there are no meaningful differences in the relative opportunities for ILECs and competitive local exchange carriers (“CLECs”) to deploy these different fiber architectures. The Commission thus correctly found that the CLECs would not be impaired without unbundled access to all three fiber architectures. McLeod’s limited, anecdotal discussion of its efforts in deploying FTTH in Cedar Rapids does not contradict the Commission’s determination that ILECs and CLECs generally face the same hurdles in deploying deep-fiber technologies.⁶

Moreover, the Commission in the *FTTC Order* went beyond simply assessing impairment. The Commission has determined that under the “at a minimum” standard of Section 251(d)(2), the Commission is obligated to examine additional factors and policies besides “impairment.” One such factor the Commission considered in the *FTTC Order* was the important policy, reflected in Section 706, of facilitating the availability of advanced services to all Americans. FTTC indisputably has the capability for providing

⁶ McLeod Petition at p. 3. Tellabs is also confused insofar as MacLeod states that copper and coax connections were required to be deployed from the “fiber drop because end user requires the use of a copper connection for most of their current customer premise equipment.” In practically all FTTH deployments, the end user requires copper connections to the customer premise equipment (telephone, computer, television). The Optical Network Terminal (ONT) in a FTTH network provides this metallic interface to the customer premise as well as an optical interface to the network, thereby eliminating the need for parallel copper and coax network connections. This applies to any service provider deploying FTTH networks, whether an incumbent or a competitor.

advanced services.

Thus, even assuming *arguendo* competitive carriers face some impairment without unbundled access to broadband FTTC loops, the Commission properly considered the impact unbundling would have on slowing the deployment of advanced services to customers.⁷ Moreover, the Court of Appeals has upheld the Commission's authority to refrain from requiring unbundling, even in the face of alleged impairment, in order to accommodate the policies enshrined in Section 706.⁸ The Commission's decision to extend unbundling relief to FTTC was therefore fully justified.

In reaching its decision to reduce the unbundling obligation on ILECs that deploy FTTC, the Commission was making a predictive judgment with regard to the investment disincentives that unbundling entails. Although BellSouth had made some investments in FTTC technologies while there was uncertainty as to the unbundling obligations, BellSouth should not be penalized for its willingness to undertake a measure of risk while the

⁷ See, *FTTC Order* at ¶ 13.

⁸ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 583 (D.C. Cir. 2004):

While the CLECs' objections are convincing in many respects, they are ultimately unavailing. Even if the CLECs are impaired with respect to FTTH deployment (a point we do not decide), the § 706 considerations that we upheld as legitimate in the hybrid loop case are enough to justify the Commission's decision not to unbundle FTTH.

regulatory landscape was still unsettled.⁹ Moreover, the Commission correctly observed that future investment decisions would be driven by the disincentives (or elimination of disincentives) when an ILEC was deciding whether to fully deploy broadband services and enhance current deployments.¹⁰ The Commission's predictions have proven prescient.

BellSouth, SBC and Verizon have all undertaken accelerated deployment of advanced, fiber-based technologies. Moreover, broadband competition is heating up – SBC has begun offering extremely low introductory rates for broadband services, and cable companies are introducing higher speed services.¹¹ Wireless broadband services are emerging as a result of Commission decisions to make additional spectrum available on both licensed and unlicensed bases. While there remains some regulatory hurdles to ubiquitous broadband deployment (*e.g.*, the disparate

⁹ *Cf.*, McLeod Petition at p. 3.

¹⁰ *FTTC Order* at ¶ 15.

¹¹ *E.g.*, Marketing Vox, "SBC Broadband Now Cheap as Dialup; High-Speed Upsurge Seen," June 2, 2005, available at http://www.marketingvox.com/archives/2005/06/02/sbc_broadband_now_cheap_as_dialup_high-speed_upsurge_seen/index.php, (discussing SBC rate of \$14.95 per month for high-speed access). CNET News.com, "Comcast to raise broadband speed," January 16, 2005, available at http://news.com.com/Comcast+to+raise+broadband+speed/2100-1034_3-5537306.html. Indeed, the Supreme Court relied upon the competitive nature of the broadband market in upholding the Commission's policy choice of declining to impose Title II obligations on cable modem services. *National Cable & Telecommunications Association v. Brand X Internet Services*, No. 04-277, decided June 27, 2005, Slip Opinion at p. 30.

treatment of telephone company and cable company broadband services, franchising issues), the steps the Commission has taken – including the unbundling relief for FTTC – has helped to spur investments in advanced technologies. The Commission should reject McLeod’s pleas to retreat from these successful policies.

WHEREFORE, Tellabs urges the Commission expeditiously to deny McLeod’s petition for reconsideration of the *FTTC Order*.

Respectfully submitted,

/s/

Stephen L. Goodman
Wilkinson Barker Knauer, LLP
2300 N Street, N.W. Suite 700
Washington, D.C. 20037
(202) 783-4141

Counsel for Tellabs, Inc.

Dated: June 30, 2005